

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18518
[REDACTED])	
Taxpayer.)	DECISION
)	
)	

On October 22, 2004, the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The Notice proposed additional use tax and interest in the total amount of \$7,167.00 for the period of July 1, 2001 through June 30, 2004. The Commission later amended the amount of the deficiency to \$5,823 based on additional documentation supplied by the taxpayer. The taxpayer filed a timely appeal and petition for redetermination on December 20, 2004.

In its petition, the taxpayer requested a redetermination of the deficiency based on Idaho tax statutes and administrative agency rule interpretations. The Commission held an informal hearing with the taxpayer on March 24, 2005.

The taxpayer sells “transit-mixed” concrete. That is, the concrete is mixed in the truck on the way to the job site. The various ingredients that make up the concrete (aggregate, cement, sand, water, and chemical admixtures) are stored separately at the taxpayer’s batch plant. These ingredients are loaded into cement trucks at the batch plant. It takes ten minutes to load the trucks and mix the concrete. The mixer drums of the trucks turn constantly from the time the ingredients are loaded until the time when the trucks return to the plant after delivering the concrete. When the truck reaches the job site, the contractor purchasing the concrete can make adjustments to the mixture by adding water or coloring agents. The trucks consume diesel fuel during this entire process, whether the truck is operating on a public highway or off. A “power take-off” (PTO) provides the power to turn the drum. According to the taxpayer, a PTO is a device that is powered

by the main engine that is also used to propel the vehicle.

Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. The use tax is a complementary tax to the sales tax imposed by Idaho Code § 63-3619. When a person buys goods and pays sales tax to the retailer, the use tax liability is extinguished. Untaxed purchases are subject to use tax unless a specific exemption applies to the use.

Idaho Code § 63-3622C states the following:

63-3622C. MOTOR FUELS SUBJECT TO TAX -- There are exempted from the taxes imposed by this chapter purchases which are subject to the motor fuels tax imposed by chapter 24, title 63, Idaho Code, and purchases upon which motor fuels taxes have actually been paid and the sale or use of any fuel which is subsequently transported outside the state for use thereafter outside the state. Nothing in this chapter shall be construed to authorize the imposition of a tax on fuel brought into this state in the fuel tanks of motor vehicles or railroad locomotives in interstate commerce.

Since fuel used on public highways is subject to the fuels tax imposed by Chapter 24, Title 63, Idaho Code, its use is not subject to the use tax imposed by Idaho Code § 63-3621. When a truck is used off the public highways, the fuel it consumes is not subject to the fuels tax. The use of such fuel becomes subject to use tax unless another sales or use tax exemption applies.

Idaho Fuels Tax Rule 292 (IDAPA 35.01.05.292) allows operators of concrete trucks to claim 30% of their fuel purchases for off-road use. Pursuant to that rule, the taxpayer applied for and received a refund of the fuels tax it paid on fuel used off-road. The Tax Commission then issued a deficiency for use tax based on the estimated purchase price of the off-road fuel.

The taxpayer in this case argues that Idaho Code § 63-3622D, commonly known as the production exemption, applies to the fuel in question. The production exemption provides an exemption for sales and purchases of equipment and supplies primarily and directly used by a

manufacturer to produce goods that the manufacturer will sell.

Subsection 63-3622D(f) provides a list of items that do not qualify for the production exemption “without regard to the use” of the item. Included in this list are motor vehicles and property used in transportation activities.

The taxpayer argues that the fuel in question is not used in transportation and that is the reason the taxpayer is allowed an exemption from fuels tax. The taxpayer further argues that the tax is not being imposed on the use of a motor vehicle but on the use of fuel.

The Commission does not find the taxpayer’s argument persuasive. Idaho Sales Tax Rule 079.05 (IDAPA 35.01.02.079) provides a list of examples of items that do not qualify for the production exemption including licensed motor vehicles, repair parts for equipment that does not qualify for the exemption, and fuel consumed during activities that do not qualify for the exemption.

The fuel used in this case is part of the vehicle itself, as much as repair parts, tires, even motor oil and other lubricants used to maintain the vehicle. It would be a logical extension of the taxpayer’s argument to conclude that part of the purchase price of these items would also be exempt from use tax. There is, however, no provision in the Sales Tax Act for apportioning such purchases.

The Commission concedes that a large portion of the production process takes place in the vehicle while it is on the way to and at the job site. The truck itself could be classified as manufacturing equipment. The statute, however, specifically removes motor vehicles from the ambit of the exemption. The fuel used to power the truck cannot be distinguished from the fuel used to turn the mixing drum. Since the purchase of the truck is taxable, without regard to its use, the purchase of the fuel used to power the truck is also taxable.

In addition to the concrete trucks, the taxpayer operates a “bulker” truck that picks up cement

from the supplier and transports it to the taxpayer's plant. This truck also consumes fuel off-road during loading and unloading. This truck is used strictly for transportation activities and the use of the off-road fuel is also taxable.

The addition of interest to the taxpayer's liability is imposed pursuant to Idaho Code § 63-3045 and is updated to July 15, 2005.

WHEREFORE, the Notice of Deficiency Determination dated October 22, 2004 is hereby is MODIFIED to account for post-deficiency amendments and as so MODIFIED is APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following taxes and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$5,271	\$727	\$5,998

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]
[REDACTED]
[REDACTED]

Receipt No.
